

§ 41.5

operation which is directed to meet the needs of Indians, and has formally adopted, in writing, such goals, philosophy, or plan of operation, which may be in the form of a constitution, by-laws, or policy statement of the Community College;

(c) If in operation for more than one year, has students a majority of whom are Indian; and

(d) Upon completion of a feasibility study, receives a positive determination, and;

(e) Is not in violation of § 41.11 of this subpart.

§ 41.5 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating expenses of education programs of Community Colleges. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.6 HHS participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Secretary for Education, Department of Health and Human Services, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

[44 FR 67042, Nov. 21, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 41.7 Feasibility studies.

(a) Grants under § 41.8 of this subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility

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study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

(1) Financial feasibility based upon potential enrollment;

(2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;

(3) Tribal, linguistics, or cultural differences;

(4) Isolation;

(5) Presence of alternate education sources;

(6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College